

DEC 7 1942

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IN THE

## Supreme Court of the United States

OCTOBER TERM, 1942

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No. 572

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JUSTINE L. LAMBERT, individually and as Executrix of  
the Last Will and Testament of Francois Lambert, also  
known as Frank Lambert, deceased,

Petitioner,

*against*

UNITED STATES OF AMERICA,

Respondent.

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT AND BRIEF IN  
SUPPORT THEREOF**

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Last Will and Testament of Francois Lambert, also  
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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Justine L. Lambert, individually and as Executrix, respectfully prays that a Writ of Certiorari issue to review an order of the United States Circuit Court of Appeals for the Second Circuit, which affirmed several orders and a judgment in favor of the respondent entered upon a Declaration of Taking in a condemnation case, and declined to review an order made by the District Judge dispensing with the appointment of Commissioners to appraise value, on the ground that the order was interlocutory, because at the time of the appeal no compensation had been determined.\*

\* The petitioner does not presently seek to review that part of the Circuit Court's order which treats the order dispensing with the appointment of Commissioners.

## Opinions Below

The opinions of the District Court are reported in 41 F. Supp. 469 (51),\* 41 F. Supp. 805 (64), and 43 F. Supp. 561 (102). The opinion of the Circuit Court of Appeals is reported in 129 Fed. 2nd, at page 678 (186). The opinion of the Circuit Court of Appeals was written by Hon. JEROME N. FRANK.

## Jurisdiction

The jurisdiction of this Court is invoked under Section 128 of the Judicial Code as amended, 28 USCA, Section 225 (a).

The Decision of the Circuit Court of Appeals was rendered on June 26, 1942. The order for the mandate thereon was entered July 14, 1942. The time to apply for this writ was enlarged by this Court to December 7, 1942, by order dated October 10, 1942.

## Questions Presented

1. Does the Seventh Amendment to the Federal Constitution require jury trials in condemnation cases?
2. Does the Government have the power to condemn land to be used by a private aviation company, as a private enterprise, and for the sole benefit, profit and use thereof, in the production of military equipment? If not, did the District Court err in excluding the proof offered at the trial to show that the property condemned was not acquired for a public use?
3. Did the Courts below err in denying to this petitioner a bill containing particulars of the allegations found in the amended petition?

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\* Numerals in parentheses refer to the pages of the record.

## Statutes Involved

The Federal statutes involved are those portions of the Condemnation Law which relate to property acquired for public use by "Declaration of Taking", (40 USCA, Sections 257 and 258 (a) and 50 USCA, Section 171).

The New York statutes involved are the New York State Constitution, Article 1, Section 7 (a), (b), and the New York State Condemnation Law (Laws of 1920, Chapter 923, Section 11).

## Statement

This action was brought by the respondent to acquire certain lands by condemnation. It was inaugurated by a Declaration of Taking signed by the Secretary of War on December 17, 1940, which accompanied a deposit in the Registry of the District Court for the Eastern District of New York, of the amount of the estimated reasonable compensation, described in the schedule attached to the Declaration (4). There followed a Judgment of Taking, entered ex parte, on the declaration (18).

A petition (9) was then served upon your petitioner, who interposed an answer (22) controverting the material allegations of the petition and setting forth the defenses that the property had been acquired for the benefit, profit and use of a private corporation. The pleadings were thereafter amended (27, 41) without producing any change of issues. Your petitioner moved for a bill of particulars (45), and the District Judge declared that although he had the power to grant a bill in a proper case, he would not grant one in this case, as a matter of sound discretion, because, since he had no power to determine whether the taking was necessary, the particulars sought were not needed (51).

Your petitioner seasonably demanded a trial by jury of the issues raised by the pleadings (57). The respondent moved to strike out the demand (58), and its motion was granted (62).

The issues were then moved for trial, at which the District Judge declined to admit proof of the necessity for the taking, upon the premise that the Court had no power to inquire as to whether the taking was necessary (67, 74-78, 81-96). After the trial the Court found for the respondent on all issues, subject to a motion to set aside the verdict (99), which motion was later denied (102-115).

Thereafter, the respondent moved for and obtained an order dispensing with the appointment of Commissioners of Appraisal (161-175), which is the method of assessment provided by New York Law.

Your petitioner appealed from all of the stated orders (158, 181) and the Circuit Court affirmed each order excepting the one dispensing with the Commissioners (196).

### **Specification of Errors Urged**

The Circuit Court erred:

1. In refusing to hold that appellant is entitled to a trial by jury on all the issues raised by the pleadings as required by the Seventh Amendment to the Constitution of the United States.

2. In holding that the Government has the power to condemn land to be used by a private aviation company, as a private enterprise, and for the sole benefit, profit and use thereof, in the producing of military equipment, in upholding the exclusion of the proof offered at the trial to show that the property condemned was not acquired for a public use, and in upholding the denial of your petitioner's motion to set aside the verdict of the trial court.

3. In refusing to hold that appellant is entitled to a bill containing particulars of the allegations found in the amended petition.

### **Reasons for Granting the Writ**

1. The Courts below have decided that they have no power to inquire whether property is taken for a public use, once the Secretary of War has certified that the acquisition is necessary to the national defense.
2. Courts have the power to inquire whether the use to which property is to be put is in fact a necessary public use, thereby excluding the possibility of taking private property for private use under the camouflage of public need.. In holding that they had no power the Circuit and District Courts committed error.
3. There is a strong possibility that because of the extensive acquisitions undertaken by the respondent there will be a frequent recurrence of the stated problem and it would promote uniformity and expedite these acquisitions if this Court would review and settle the question.
4. The decision of the Circuit Court below is in conflict with the decision in *Beatty v. U. S.* (1913), 203 Fed. 620, C. C. A. 4, Cert. Denied, 232 U. S. 463, which holds that a landowner in a condemnation suit is entitled to a trial by jury under the Seventh Amendment to the Federal Constitution.
5. The decision of the Circuit Court below is in conflict with the decision of this Court in *Kohl v. U. S.*, 91 U. S. 367, and the later authorities in this Court based upon the same case.

Wherefore your petitioner respectfully requests that a  
Writ of Certiorari be granted as prayed for.

Dated: December 1, 1942.

Respectfully submitted,

**E. JOHN ERNST, JR.,**  
Counsel for Petitioner.